*THE HONOURABLE SRI JUSTICE P.S.NARAYANA

+WRIT PETITION NO.26987 of 2007

%31-12-2007

Md.Mahmood Ali …Petitioner

Vs.

$ The Deputy Collector and Tahsildar,
Hayathnagar,
Ranga Reddy District and 2 others.

…Respondents

!Counsel for the petitioner :Sri V.H.V.R.R.Swamy
^Counsel for respondents : Sri Government Pleader for Civil Supplies.

<Gist :
>Head Note:

?Cases Referred:

1.1994 (6) SCC 205
2.1996 (2) An.W.R. 441
3 1997(1) ALT 171 (D.B.)
4.1996(3) ALT 673 (D.B.)
5.2000(1) ALT 239 (F.B.)
6.(2000) 3 SCC 306

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 26987 of 2007

Date: 31-12-2007

Between:

Md.Mahmood Ali

..... PETITIONER

AND

The Deputy Collector and Tahsildar,
Hayathnagar,
Ranga Reddy District and 2 others.

.....RESPONDENTS

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No. 26987 of 2007

O R D E R:

1. This Court issued Rule Nisi on 20-12-2007 and heard Sri V.H.V.R.R.Swamy, learned counsel representing the petitioner, and the learned Government Pleader for Civil Supplies at length and at the request of both the counsel, the matter is being disposed of finally.

2. This writ petition is filed praying for issuance of a writ of *Mandamus* declaring the action of respondents in seizing the lorry bearing No. AP 13-T 5402 dated 14-11-2007 as null and void and consequently issuance of proceedings under Sections 6-A and 6-B of the Essential Commodities Act, 1955 (for short 'the Act') in Case No. A7/828/2007 dated 30-11-2007 served on 13-12-2007 as null and void and to pass other suitable orders.

3. Sri Swamy, learned counsel representing the petitioner, had taken this Court through the contents of the affidavit filed in support of the writ petition and had pointed out to the relevant provisions of the Act and would maintain that on a careful reading of the show cause notice, it is clear that violation of the contract agreement alone had been referred to, even otherwise diversion of the vehicle had been specified as having taken halt at the petrol bunk. The learned counsel in elaboration had pointed out to the relevant portion of the impugned proceedings and also would maintain that what are the contraventions had not been specified. The power of seizure to be exercised when there is only contravention of a particular control order, even otherwise notice to be given to the owner as contemplated under Section 6-B of the Act. The learned counsel also had taken this Court through Section 6-A and Section 3 of the Act as well. The seizure of vehicle would not arise when a Stage-I contractor is said to have contravened the conditions of the agreement. The power of seizure can be exercised only where either the provisions of the Act are contravened or the specific control order as such had been contravened and therefore, the Rice Levy Procurement Order, which is being relied on, is not applicable to the facts of the case at all. The learned counsel also explained what a reasonable belief may mean. The counsel relied on several decisions to substantiate his submissions.

4. The learned Government Pleader for Civil Supplies would maintain that the rice is meant for Public Distribution System and the same was being illegally transported. The power of seizure is there when there is contravention of provisions of the Act referred to above and the relevant control orders. The learned Government pleader for Civil Supplies placed a strong reliance on clauses 20, 7 and 14 of the Rice Levy Procurement Order. Further the learned Government pleader would maintain that if the provisions of Sections 3, 6-A of the Act, carefully read in a way, the present writ petition is a premature one since the show cause notice was issued only in relation to the immediate steps to be take in relation to the essential

commodity and hence, the vehicle had not been referred to. The confiscation stage did not reach till now and further the release application of the vehicle had already been moved. Further the counsel would submit that the decisions, relied upon by the counsel for the writ petitioner are distinguishable on facts and are not applicable to the facts of the present case. The leaned counsel also placed reliance on certain decisions.

5. The petitioner is the owner of the lorry bearing No. A.P.13-T 5402. Sri Sashidrar Reddy is the stage-I transport contractor, who hired the vehicle of the petitioner for the purpose of transport of rice from depot FCI Cherlapally, Ranga Reddy District to the MLS point Ramanthapur on a rent of Rs.1,000/-. On 14-11-2007 stage-I contractor loaded the lorry with stocks of PDS rice of 153.65 quintals and dispatched the lorry at 4.30 P.M. and the same was seized by the respondent on 14-11-2007 at 6.00 PM. at Peda Amberpet village, National High Way No.9. At the time of seizure, the lorry was halted near petrol bunk. The first respondent seized the vehicle, conducted panchanama and submitted report under sections 6-A (1) of the Essential Commodities to second respondent on 17-11-2007. He alleged that the driver of the lorry with a *mala fide* intention diverted the rice meant for Public Distribution System into black market and at present the lorry has been kept in Hayatnagar Police Station. The first respondent seized the lorry and handed over the same to the Hayatnagar police and as on today, no orders had been passed. It is also stated that the petitioner filed an application to second respondent-Joint Collector, Ranga Reddy District, Hyderabad praying for release of lorry bearing No.AP 13-T 5402 on

27-11-2007. As the second respondent cannot initiate proceedings under Section 6-A of the Act and as there is no contravention of any of the control orders made under Section 3 of the Act, the second respondent has no power or authority to confiscate the seized rice as the rice belongs to the Government and the petitioner being the owner of the vehicle transporting the vehicle from FCI Godown to Ramanthapur MLS point. Several decisions also had been relied upon in this regard and appropriate releifs had been prayed for as already specified above in the present writ petition.

6. The report under Section 6-A (1) of the Act reads a hereunder:

Report under Section 6-A (1) of Essential Commodities Act, 1955

1. Section of law contravened : Contravention of provisions of the E.C. Act 1955 and the AP PDS (Control) Order, 2001.

2. Date of Inspection : 14-11-2007

3. Date of 6-A report : 17-11-2007

4. Name of the Inspecting Officers : 1. Sri A.Nagendra, Dy.Collector & Tahsildar,Hayathnagar

Mandal, R.R.District.

5. Name of the respondent : 1. Sri Md.Fareed, Driver of the Lorry bearing No.AP 13 T 5402
2. Sri Md.Mahamood, Owner of the Lorry bearing No. AP 13 T 5402
3. Sri P.Shashidar Reddy, Stage-I, Transport Contractor, R.R.District.

6. Property seized : 1. 315 bags @ 49 Kgs each of PDS rice Total: 153,65 Qtls Rs.1,38,000/-
2. Lorry bearing No. AP 13 T 5402worth of Rs.3,00,000/-

Rs.4,38,000/-

---

7. Whether the seized property has been shifted and the address of the person with whom it is kept for safe custody : Handed over the seized rice stocks to Smt.N.Nagalaxmi, Asst.Gr-II incharge of MLS Point, Hayathnagar and handed over the empty lorry bearing No.AP 13 T 5402 to the Station House Officer, Hayatnagar for Safe custody until further orders received from the Collector(CS), R.R. District.

8. Records Seized : ---

9. Name of the Panchas : 1. Sri Jurka Yadaiah, S/o. gandaiah Age 42 Yrs., R/o 1-121,Kuntloor, Occ: Business.

2. Sri Kodanda Rajendra Prasad, S/o Swamy, Age: 30 Yrs., R/o 4-7-44, Hayatnagar, Occ:Pvt.Employee.

3. Sri Padi Chandu, S/o.Lingamaiah, Age 25Yrs., R/0 4-7-36, Hayathnagar, Occ:Labour.

10. Name of the witnesses : 1.Sri K.Venkatesh
2. Sri N.Laxmaiah

11. Facts of the case :

In the Court of the Collector (CS): Rangareddy District.

-

Sir,

On receipt of credible information about diversion and illegal transportation of FCI Rice meant for Public Distribution System on the National Highway leading to Vijayawada and as per the instructions received from the Joint Collector-II, Ranga Reddy District. I, along with the Assistant Supply Officer, Circle-II, Uppal, Circle-III, Saroornagar and the Deputy Tahsildar (Enf), Hayathnagar and Ibrahimpatnam have proceeded to Pedda amberpet village of Hayathnagar Mandal on 14-11-2007 at about 6.00 PM and summoned the above mediators. After introducing our

identity, explained them about the information received and purpose of our visit and requested them to act as Panch Witnesses, which they agreed willingly. After that we all proceeded to the out skirts of the Pedda Amberpet Village on the National Highway No.9 and while checking the lorries which were passing on the National Highway, we noticed a lorry bearing No.AP 13 T 5402 with the load covered by the Tarpalein was halted near a Petrol Bunk. We all approached the said lorry and on noticing us one person jumped down from the lorry's cabin and fled away from the scene. We made our efforts to catch hold that person, but our efforts were proved futile. Then we verified cabin of the lorry for trace out documents pertaining to the load, but at the time of verification we found no documents, permits, Registration Certificates etc. Further no person was available near by to the said lorry. Though we waited there for some time, no body come forward claiming the vehicle and stock. After that we noticed that there was rice bags load in the lorry, which was covered by Tarpalein and tightened with the ropes. We opened the tapalein in the presence of mediators and verified that stocks and found that there were PDS rice bags in the lorry. The bags were machine stiched and having FCI emblem with lot numbers, ACK numbers and Rice Mill Addresses.

Thus prima facie, it is established that the rice load in Lorry bearing No.AP 13 T 5402 was being illegally transported without any Way Bill, truck chit, Permit or any valid document contravening the provisions of the EC. Act, 1955 and the A.P.PDS (Control) Order, 2001 for diversion into black market. As I have reason to believe that there were contraventions as stated about, I have seized the lorry baring No.AP 13 T 5402 along with PDS rice bags and handed over the seized property to the Station House Officer, Hayathnagar for temporary safe custody, as the near by MLS Point was not available at that time and obtained receipt from the Station House Officer. After that I called upon the in charge of MLS Point, Hayathnagar on Smt. N.Nagalaxmi, Assistant Grade-II. Then, requested the Station House Officer, Hayathnagar to handedover the rice stocks along with Lorry to the Deputy Tahsildar (Enf), Hayathnagar. In turn the Inspecting officials have taken over the lorry bearing No.AP 13 T 5402 from the Station House Officer, Hayathnagar and proceeded to the MLS Point to the Hayathnagar. In turn the Inspecting officials have taken over the lorry bearing No.AP 13 T 5402 from the Station House Officer, Hayathnagar and proceeded to the MLS Point to the Hayathnagar. The in charge of the MLS point has unloaded the rice stocks from the lorry and wighed every bag with the help of hamalies on counting and physical weightment it was found that there were 315 bags weighing 153.65 Qtls of PDS rice available. Further, it was noticed that all bags were machine stiched and printed with FCI emblem lot numbers /ACK numbers. We handedover the above rice stocks to Smt.N.Nagalaxmi, Assistant Grade-II, In charge of MLS Point, Hayathnagar for safe custody under cover of Panchanama, until further orders received from the Collector (CS) Ranga Reddy District and obtained receipt from her in token of receipt of PDS rice stock will full details of lot numbers, ACK numbers etc. We have also drawn the samples of Rice randomly from the rice bags in the presence of mediators duly sealed them in the cartool bags. Further I have handedover the empty lorry bearing No.AP 13 T 5402 to the Station House Officer, Hayathnagar for safe custody, until further received from the Collector (CS) Ranga Reddy District under proper acknowledgment. The value of the seized property is worked out as follows

1. Lorry bearing No.AP 13 T 5402 worth Rs.3,00,00/-
2. PDS Rice bags weighing 153-65 Qtls containing in 315 bags worth Rs.1,38,000/-

(Total worth of Rs.4,38,000/-)

During the course of further investigation about the above seized stocks, we obtained the details of the loads dispatched on 14-11-2007 from the Depot Manager, FCI, Cherlapally, Ranga Reddy District and the movement in charge of APSCSC Limited at the above godown. As per the statement furnished by the Depot Manager, FCI, Cherlapally, it reveals that the lorry bearing No.AP 13 T 5402 was loaded with 315 bags of AP Rice and dispatched from the godown at 4-15 PM with a destination of Ramanthapur MLS point under truck chit No.2211. Further as per the statement furnished by the Movement in charge of APSCSC Limited, it reveals that the said lorry was dispatched from the Godown point at 4-35 PM on 14-11-2007 with truck chit number 27839 to Ramanthapur MLS point as destination. As per the truck wise movement particulars of rice moved on 14-11-2007 obtained from the District Manager, APSCSC Limited, Ranga Reddy District, it reveals that the said lorry was not reached to the MLS point, Ramanthapur and as per the stock receipt register Xerox extract

furnished by the MLS point incharge, Ramanthapur also reveals that the above load of rice was not reached the MLS point. Thus, it is clearly proved that the driver of the lorry with a *mala fide* intention to divert the rice stocks meant for PDS into black market only, proceeded towards Pedda Amberpet village of Hayathnagar Mandal, R.R. District instead of destinated place i.e., MLS point, Ramanthapur.

Hence, it is prayed that action may kindly be initiated against the respondents under Section 6-A(1) of the E.C. Act, 1955 and to pass orders for confiscation of the entire seized stocks in favour of the State Government. Further, it is prayed that pending final orders under Section 6-A (1) of E.C. Act, 1955, interim disposal orders under Section 6-A (2) of E.C. Act, 1955 may be issued as deemed fit as the seized stocks are perishable in nature.

7. It is pertinent to note that in the report itself it is specified that on receipt of credible information about diversion and illegal transportation of FCI rice meant for Public Distribution System on the National highway leading to Vijayawada and as per the instructions received from Joint Collector-II, Ranga Reddy District, he along with the Assistant Supply Officer, Circle-II, Uppal, Circle-III, Saroornagar and the Deputy Tahsildar (Enf), Hayathnagar and Ibrahimpatnam had proceeded to Pedda Amber village of Hayathnagar Mandal on 14-11-2007 at about 6.00 PM and summoned the above mediators. Further it is specified that

prima facie, it is established that the rice load in lorry bearing No.A.P.13-T 5402 was being illegally transported without any

way bill, truck chit, permit or any valid document contravening the documents of the Act and A.P.PDS Control Order 2001 for diversion into black market. Further, it clearly reveals that the said lorry was not reached to the MLS point, Ramanthapur and as per the xerox extract of the stock receipt register furnished by the MLS point in-charge, Ramanthapur also the above load of rice did not reach the MLS point.

8. The applications moved by the writ petitioner and by the Sasidhar Reddy for release of the vehicle in question are also placed before this Court. Strong reliance was placed on the wording employed in the show cause notice dated 30-11-2007 by the Joint Collector-II, Ranga Reddy District under Section 6-B of the Act and the same reads as hereunder:

-

-

-

-

IN THE COURT OF THE JOINT COLLECTOR-II RANGAREDDY DISTRICT

NOTICE UNDER SECTION 6-B OF THE E.C.ACT, 1955.

-

6-A CASE NO.A7/828/2007 Dated:30-11-2007

Between:

The Deputy Collector & Tahsildar,
Hayathnagar Mandal,
Ranga Reddy District

…Complainant/Petitioner

and

1. Sri md.Fareed, Driver
   of the lorry bearing No.AP 13 T 5402.
2. Sri Md.Mahamood, Owner
   of the lorry bearing No.AF 13 T 5402.
3. Sri P.Shashidar
   Stage-I, Transport Contractor,
   R.R.District.

….Respondents.

To
The above named Respondent.

Whereas the complainant has seized 153.65Qtls of PDS Rice, from your possession and filed a report dated 17-11-2007 under Section 6-A of Essential Commodities Act and for contravention of conditions of Contract Agreement as Stage I Contractor for enrooting the vehicle and requested for confiscation of the same in favour of the Government. Upon perusing the same there are reasons to believe that, the prima facie of diversion of Essential Commodities is proved.

Therefore, the following charges have been leveled against the Respondent.

Charge1:

It is found that being a stage 1 contractor you have colluded with the owner and the driver of the lorry bearing No.AP 13 T 5402, you have enrooted the vehicle along with 153.65 Qtls of PDS Rice instead of giving delivery at MLS point Ramanthapur for black marketing the PDS rice and respondent No.3 being a Stage-I Transport Contractor you have violated the Contract agreement as Stage-I Contractor read with the provisions of the E.C. Act, 1955.

Since there are sufficient grounds to proceed under Section 6-a of the Essential Commodities Act, 1955 you are hereby directed to submit your explanation in writing within 15 days from the date of receipt of this notice to show cause as to why the seized stocks should not be confiscated under Section 6-A of Essential Commodities Act, 1955.

You are further directed to appear before this Court on 19-01-2008 at 3.00 P.M. before Joint Collector-II, R.R.District at Court Hall, Collectorate, R.R.District either in person or through Advocate to adduce evidence in support of your written explanation.

Sd/- Solomon Arokia Raj
Collector (C.S.)
Ranga Reddy District.

//By Order//

Assistant Supply Officer,
DSOs Office, R.R.District.

9. Submissions at length were made that the seizure of the lorry had not been referred to in the show cause notice at all and hence, even on this ground, the vehicle should be released by this Court.

10. As can be seen from the averments made in the affidavit filed in support of the writ petition and also the proceedings placed before this Court, certain factual controversies are involved in this matter and this Court as a writ Court cannot

express any opinion relating to these aspects. Strong reliance was placed on Sections 3, 6-A 6-B of the Act and the said provisions read as hereunder:-

Section 3:- Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section(2), there shall be paid to him the price therefore as hereinafter provided—

(a) where the price can, consistently, with the controlled price, if any, fixed under this Section, be agreed upon the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any:

(c) where neither clause (a) nor clause (b) applies, the price, calculated at the market rate prevailing in the locality at the date of sale.

Section 6-A:- Confiscation of essential commodity.- (1) Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency Town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of-

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity :

Section-6-B : **Issue of show-cause notice before confiscation of Essential Commodity:-**

(1) No order confiscating any essential commodity, package, covering, respectable, animal, vehicle, vessel or other conveyance shall be made under Section 6-A unless the owner of such essential commodity, package, covering receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the (essential) commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance);

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order c9onfisating any animal, vehicle, vessel or other conveyance shall be made under Section 6-a if the

owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or conveyance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.)

(3) No order confiscating any essential commodity, package, covering receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice given under clause(a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.

11. Certain submissions were made in relation to Clause 2(d), clause 7 and Clause 14 of the Rice Levy Procurement order as well. In **N.Nagedra Rao & Co. v. State of A.P.**[1] the Apex Cour at para 5 observed -

5. Prior to adjudicating upon the legal issues, it appears appropriate to examine in brief the objective of the Act, the provisions dealing with search, seizure and confiscation and the nature of their powers and manner of its exercise as it shall assist in determining if the statutory authorities are responsible for any loss or damage to the stocks and, if so, to what extent. The Act was enacted in the interest of the general public for the control of the production, supply and distribution of essential commodities and trade and commerce. In M/s. Diwan Sugar and General Mills (Pvt.) Ltd. v. Union of India, AIR 1959 SC 626 : 1959 (2) SCR 123, It was held that the prime object of the legislation was to secure availability of essential commodities to the general public at fair prices and to protect their interest by way of equitable distribution. "Essential commodity" under Cl. (a) of S. 2 of the Act means any of the commodities mentioned therein. It extends to such varied items as cattle fodder, coal, component parts and accessories of automobiles, cotton and woollen textiles, foodstuffs, iron and steel, paper, petroleum, raw cotton, jute and any other class of commodity notified by the appropriate Government. S.3 is the main provision directed towards securing equitable distribution of the essential commodity and its availability at fair prices. To achieve this objective, its various sub-sections confer powers on Government to issue orders regulating or even prohibiting production, supply and distribution of such goods. Cl. (j) of sub-sec. (2) of S. .3 empowers the Government to make any provision for any incidental or supplementary matter including in particular, the entry, search or examination of such premises, aircraft, vessels, vehicles etc. to make seizure by a person authorised to make such entry, search or examination. But the power in respect of the articles has been made subject to reasonable belief that a contravention of the order has been, is being, or

about to be committed. The reach of the sub-section is very wide as it empowers the person authorised to seize even if any contravention is about to be committed. The expression 'reason to believe' has been interpreted by this Court to mean that even though formation of opinion may be subjective but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical. It is, thus, a check on exercise of power to seize the goods. The procedure after seizure is provided for by S.6A of the Act. Sub-sec. (1) of it is extracted below :-

"6-A. Confiscation of essential commodity.- (1) Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency Town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of-

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity :

It requires a report of seizure of the essential commodity to be made without unreasonable delay to the Collector of the district who is empowered to direct confiscation if he is satisfied that there has been a contravention of the order. This requirement is to ensure that the higher authority shall apply its mind and take necessary steps in accordance with law. For instance, in this case even non-essential goods were seized. If the Collector would have applied its mind and perused the report he would have immediately directed release of such goods instead of directing its sale by Tehsildar as the provision of the Act and the Control Orders do not apply to non-essential goods. The exercise of power was obviously mechanical. This is being mentioned only to demonstrate the nature of power and how it is expected to be exercised. Nothing turns on it so far this appeal is concerned. But what needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found of is conveyed or carried, but is liable to be prosecuted and penalized under S. 7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of

> the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black-marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."

12. Further strong reliance was placed on the decision of the learned Judge of this Court in **M/s Harsha Transport Vs. State of A.P.**[2] wherein the learned Judge at paras 5, 6 and 7 observed as under:

> 5. The argument of Mr.E.Manohar, Senior counsel for the petitioner, is that the petitioner is an innocent of the violation of the alleged acts committed in the case but launching or initiating proceedings under E.C.Act and under the A.P. Scheduled Commodities (Licensing and Distribution) Order, 1982 are not attracted but the petitioner may be guilty of violation of provisions of Indian Penal Code and in so far clause 19 (1 if the A.P. Scheduled commodities Dealer's (Licensing and Distribution) Order, 1982 is there, the Corporation respondent No.5 enjoys the power of purchase, sale or storage of essential commodities and if any action is initiated for violation of provisions of E.C. Act against the property which is vested in the Corporation, it will be deemed to be stripping of the exemption which it enjoys in Law and in so far the essential Commodity or edible oil is deemed to be under the ownership of 5th respondent, any proceedings by the authorities in the instant case are arbitrary and without jurisdiction and can not be sustainable in law.
>
> 6. In the circumstances, I am inclined to take the view that the petitioner is the agent of the 5th respondent and has the obligation to transport the oil from Visakahaptnam to various places in Rangareddy District, and even during the course of movement of the oil, the respondent No.5 is not divested of its ownership and by virtue of sub-clause (i) of clause 19 of A.P. Scheduled Commodities Dealer's (Licensing and Distribution) Order, 1982, the respondent No.4 has no jurisdiction or authority to seize the commodity and similarly the respondent No.2 has no authority to confiscate and sell the seized commodities, as such I quash the orders issued by the Government in G.O.Ms.No.135 Food and Agriculture (CS-II) Department dated 3-3-1988 confirming the order of the second respondent dated 17-8-1987 in so far with regard to the petitioner.
>
> 7. The next question is with regard to *inter se* dispute between the petitioner and the 5th respondent for reference to the arbitration as per the terms of the agreement dated 5-6-1986.

Without going into the merits of the question whether the petitioner can raise such issue in writ proceedings Mr.N.Subba Reddy, learned Counsel appearing for respondent No.5, replying on the unreported judgment of Dasharadha Ram Reddy J. in W.P.No.15047 of 1990 dt 23-3-1995, submits that directions any be issued as his client is agreeable for referring matter to the arbitration as requested by the petitioner in his letter dated:2-5-1987 but submits that the petitioner may make a fresh request to the 5th respondent in this regard for referring the dispute to the arbitration under clause 22 of the agreement dated: 5-6-1986.

13. Further reliance was placed on **Ch.V.Ranga Rao vs. Govt. of A.P**[3], wherein a Division Bench of this Court had observed at para 8 as under-

"We have scanned the agreement and orders and heard arguments *inter se*, advanced on behalf of the Oil Corporation and Civil Supplies Corporation and the petitioners. From the said agreements spring civil action and if the respective Corporations want to prosecute their remedies, they can do so but not under the provisions of Essential Commodities Act, 1955, as we are not dealing with the consequences arising out of breach of contract and as we are called upon to answer as to whether the action of pilferage by the drivers while operating the tankers give rise to any penal action of confiscation of the vehicles while dissecting the same from the liability of confiscation of the commodity, be it diesel, petrol or palmolein oil. The judgment of learned single judge of this court dated 13-3-1996 rendered in W.P.No.9963 of 1988 is brought to our notice and we have perused the same. The Commodity Order of 1988 vis-à-vis A.P.Civil Supplies Corporation, similar to that of the last writ petition herein was adjudicated. Similar question arose with regard to the exemption of Civil Supplies Corporation. It is held in that case that the Civil Supplies Corporation is exempted from the Commodities Order and even though it was seized during the course of transportation, the goods continue to be vested in the Civil Supplies Corporation and it continued to be the owner, and when the ownership was not divested merely because of process of Transportation and such exemption covered the said process of transportation, as such the A.P. Scheduled Commodities (Licensing and Distribution) Order, 1982 was inapplicable and there was no jurisdiction to seize the commodities. We concur with the view of the learned Single Judge. Section 3 of the Essential Commodities Act, confers powers to promulgate the order. Petroleum Order or Commodities Order are such Orders in exercise of powers contained under Section 3 and they are by way of Subordinate Legislation while the main provision is Section 3 which contains power of delegation empowering Subordinate Legislation. Violation of orders

promulgated under Section 3 can give rise to an action for seizure of the commodity and also the container or vehicle which carries the said commodities, but, when the Order itself is not applicable, because of the exemption clause mentioned above, the question of violation of Section 3 does not arise and consequently Section 6-A of the Act has got no application. Further under Section 6-A of the Act, the first target for confiscation is the commodity and only if the commodity is confiscated, the container or vehicle can be confiscated. Even while the power of confiscation of the commodity is absolute, the confiscation of the container or vehicle is not an inevitable corollary and the owner of the container or vehicle can always plead innocence by adducing evidence, get freed from the confiscation of the said container or vehicle. While there is absolutism insofar as confiscation of commodity is concerned, when the violation is proved, the confiscation of the vehicle or container is conditional as mentioned supra and as such, there cannot be any dichotomy between the commodity and the container or the vehicle and unless the commodity is confiscated, the question of confiscation of the container or vehicle cannot and does not arise. A look at the provisions of Clause 22 of the Petroleum Order also throws some light as it specifically excludes petroleum in a tank fixed permanently to motor vehicle."

14. In **M/s. Vinayaka Agro Products vs. Inspector of Police**[4] Division Bench of this Court at para 8 observed:

> 8. It is not as if the State and its officers entrusted with the statutory powers and duties can behave like bull in a china shop. Seizure or confiscation of property of the citizens is always fraught with serious consequences. Illegal seizure and search would undoubtedly affect the guaranteed fundamental rights of the citizens and their right to carry on business in trade apart from their right to equality and equal protection of laws guaranteed by Article 14 of the Constitution of India. The 'seizure' is nothing but taking possession by an officer authorized in pursuance of legal process and same should always be clearly supported by the authority of law. The principle would apply even with regard to the power exercised for seizure with reference to any statute including the Essential Commodities Act (Act 10 of 1955). The apex Court in N.Nagendra Rao & Co. vs. State of A.P. (AIR 1994 SC 2663) summarized the law on the subject.
>
> "No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round

and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State the Government at par with any other juristic legal entity. Any water-tight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken."

And further held:

"Any power for regulating and controlling the essential commodities and the delegation of power to authorized officers to inspect, search and seize the property for carrying out the object of the State cannot be a power for negligent exercise of which the State can claim immunity. No constitutional system can, either on State necessity or public policy, condone negligent functioning of the State or its Officers."

15. Further reliance was placed on a judgment of the Full Bench of this Court in **Geetha General Merchants v. Inspector of Police, VC, CSD**[5], wherein a Full Bench of this Court observed:

"4. In our opinion, the question posed by their Lordships does not admit of a definite answer either in the affirmative or in the negative. There cannot be a fetter on the Constitutional power of this Court under Article 226 to grant appropriate relief, including the release of goods. There cannot be a broad and inflexible proposition that in no case, the High Court can direct release of the goods seized unless and until the proceedings under Section 6-A take their own course. However, having regard to the purpose of the Act and the internal remedies available under the Act, the High Court should be slow and cautious in granting directions for the release of essential commodities, in exercise of jurisdiction under Article 226. In *State of W.B vs. Calcutta Hardware Stores* (AIR 1986 SC 614), the Supreme Court while finding fault with the High Court in directing release of the seized goods at the interlocutory stage observed:

"…….It is needless to stress that the question whether the seized goods answer the description of tin plates, tin plates waste, waste or waste material etc. or whether the respondents had committed a contravention of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order issued under S. 3(1) of the Act,

which is an offence punishable under Ss. 7 and 8, are all questions to be gone into and tried before the learned Special Judge, 24 Paraganas, Alipore before whom the trial is pending. That apart, the observations call in question the validity of the action of the Additional Collector in serving a notice of confiscation under Section 6-A of the Act with respect to the seized goods. We do not see legality and propriety of making these observations by the learned Judges which have the effect of prejudging the whole issue before the learned single Judge who is seized of the writ petition, as also foreclosing the trial of the respondents for commission of the alleged offences."

Adverting to the writ jurisdiction of the High Courts under Article 226, the oft repeated exhortation was reiterated by their Lordships in the following words:

"Although the powers of the High Court under Art.226 of the Constitution are far and wide and the judges must ever be vigilant to protect the citizens against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the larger public interest an element of self-ordained restraint."

The decision in *Shambhu Dayal Agarwala vs. State of West Bengal* ((1990)3 SCC 549) makes it clear that the release of the goods seized, if ordered as an interim measure, would defeat the objective and scheme of the Act. In that case, it was held that even the Collector who is the competent authority had no power to direct release of the goods seized to the person from whom they were seized pending the proceedings under Section 6-A.

5. Thus, the release of goods seized should not normally, and as a rule of prudence, be ordered in exercise of jurisdiction under Article 226 though the powers under Article 226 are wide and untrammeled by any limitations, except self-imposed limitations. It is only in rare and exceptional cases, such a direction, if at all, could be issued. In this category may fall such cases where indisputably and *ex facie,* the goods were seized without regard to the provisions of any control Order or by an Officer not invested with jurisdiction or there is demonstrable proof of abuse of power suggesting that extraneous considerations weighed with the Officer concerned. If the seizure is wholly outside the provisions of the Control Order or the Essential Commodities Act, that could be a ground for quashing the proceedings in exercise of jurisdiction under Article 226. Of course, in doing so, the High Court will not delve deep into the merits, much less into the disputed questions of fact. If, on the face of it, the action is wholly outside the provisions of the Act and the seizure is beyond the jurisdiction of the authority concerned, such cases may afford justification to intervene under Article 226. One

such case in point is the one decided by the very same learned Judges who referred the matter to the Full Bench, viz., *Vinayaka Agro Products vs. Inspector of Police*(1996 (3) ALT 673 (D.B).

6. We would only close the discussion on this aspect of the case with an observation that the parameters of the power of the High Court under Article 226 vis-à-vis the seizure of essential commodities cannot be put in a straight jacket formula. The only qualification, which we would like to reiterate, is that the power should only be exercised in rare and really exceptional cases as indicated supra and it can safely be said that the normal rule is not to direct the release until the proceedings are completed."

16. The learned Government Pleader for Civil Supplies placed strong reliance on a decision of the Apex Court in **Deputy Commissioner, Dakshina Kannada District v. Rudolph Fernandes**[6], wherein at paras 5 to 10 the Apex Court observed.

5. At the outset it is to be stated that the object of the Act is to deter a person from illegally dealing in an essential commodity and consequently, impose a deterrent penalty against a person dealing in them illegally. While doing so, the law takes care to prevent the owner of any vehicle from aiding or assisting such an illegal activity. As per the preamble of the Act, the Act is to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities. For this purpose, Section 3 empowers Central Government to provide for regulating or prohibiting the production, supply and distribution of the essential commodity and trade and commerce therein if the same is considered necessary or expedient inter alia for maintaining or increasing supply of any essential commodity or for securing their equitable distribution and availability at fair prices by passing an appropriate order. Section 6-A as quoted above provides for seizure and confiscation of essential commodity for contravention of any order issued under Section 3. Further Section 6-B provides for issuance of show cause notice and the procedure for confiscation of the seized essential commodity as well as any package, covering or receptacle in which the essential commodity is found or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. Section 6-C provides for appeal against the confiscation order and the procedure for return of the confiscated article in case where appeal filed against the confiscation order or the order passed under Section 7 forfeiting the essential commodity is set aside. Thereafter, Section 6-D provides that the order of any confiscation under The Act shall not prevent the infliction of any punishment to which the person affected thereby is

liable under The Act. Therefore, even if the essential commodity or the vehicle is confiscated, the person can be prosecuted and the penalty provided under Section 7 can be imposed. Section 7(1)(a) provides for punishment to any person who contravenes any order made under Section 3. Section 7(1)(b) and (c) empowers the Court to forfeit to the government any property in respect of which the order has been contravened or to forfeit any package, covering or receptacle in which the property is found and also any animal, vehicle, vessel or other conveyance used in carrying the property.

6. In the light of the aforesaid provisions, second proviso to Section 6-A[sic 6-A(1)] is required to be considered. First it is to be stated that the proviso limits the power of the competent authority to recover fine up to the market price for releasing the animal, vehicle, vessel or other conveyance sought to be confiscated. So maximum fine that can be levied in lieu of confiscation should not exceed the market price. For our purpose, the relevant part of the proviso would be "in the case of.... vehicle... the owner of such..... vehicle shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such..... vehicle". Question is whether fine should not exceed the market price of the seized essential commodity or whether it should not exceed the market price of the vehicle. For this purpose, it appears that there is some ambiguity in the Section. It is not specifically provided that in lieu of confiscation of the vehicle a fine not exceeding the market price of the vehicle or of the seized essential commodity is to be taken as a measure. Still however, it is difficult to say that the measure of fine is related to the market price of the essential commodity at the date of its seizure. It nowhere provides that fine should not exceed market price of the essential commodity at the date of seizure of the vehicle. The proviso requires the competent authority to give an option to the owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market price. What is to be confiscated is the vehicle and, therefore, the measure of fine would be relatable to the market price of the vehicle at the date of seizure of the essential commodity sought to be carried by such vehicle. This would also be consistent with the scheme of Section 7 which provides for levy of penalty. It empowers the Court trying the criminal case to pass an order forfeiting to the Government any property in respect of which the order under Section 3 has been contravened. It also empowers forfeiture to the Government of any package, covering or receptacle in which the property is found and in addition any animal, vehicle, vessel or other conveyance used in carrying the commodity. Therefore, not only the essential commodity which is seized is to be forfeited, but the vehicle also could be forfeited to the Government. Hence, measure of fine which is

required to be levied in lieu of confiscation under second proviso to Section 6-A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of essential commodity. That is to say, the limit of such fine would be up-to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case.

7. In Shambhu Dayal Agarwala v. State of West Bengal, (1990) 3 SCC 549 after considering the scheme of Sections 6-A and 7 and dealing with the proviso (ii) to sub-sec. (2) of Section 6-A, this Court observed :-

"Section 6-A, therefore, merely confers power of confiscation and not the power of release, disposal, distribution, etc., except to the limited extent permitted by sub-section (2) thereof. Of course, the second proviso to sub-section (1) of Section 6-A permits the grant of an option to pay, in lieu of confiscation of any animal, vehicle, vessel or other conveyance, *a fine equal to its market price at the date of seizure*."

(emphasis added)

8. Lastly we would mention that in the impugned order dated 22nd March 1998, the High Court in support of its reasoning referred to a similar provision under Section 115(2) of the Customs Act, 1962, which provides for confiscation inter alia of any vehicle used as means of transport in smuggling of any goods or carriage of any smuggled goods which is as under :-

"115. Confiscation of conveyances.- (1) * * *

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal 3[*****].

3. Omitted by Act 26 of 1988, Sec. 79.

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation.- In this section, "market price" means market price at the date when the goods are seized."

9. The Court observed that though the language of the aforesaid proviso is clear, the idea sought to be conveyed under the proviso to Section 6-A(1) of the Act appear to be the same. In our view, the analogy drawn by the High Court is erroneous because the proviso specifically mentions that

> where any such conveyance is used as a means of transport in the smuggling of goods, the owner of any conveyance is to be given an option to pay in lieu of the confiscation of the conveyance, a fine not exceeding the market price of the goods which are sought to be smuggled. The explanation provides that the market price means market price at the date when the goods are seized. As against this, Section 6-A second proviso does not refer to payment of fine not exceeding market price of the essential commodity but apparent reference is a fine not exceeding the market price of the vehicle sought to be confiscated. This appears to be obvious because in a case where the market price of the seized essential commodity is more than the price of the conveyance then the owner of the conveyance would not come forward to take it back if he is asked to pay something more than its market price. Similarly, when the market price of the seized vehicle is much more than of the essential commodity, it cannot be said that instead of confiscation it should be released at a price which is less than its market price. Further it is required to be noted that under Section 6-B(2) no order confiscating vehicle or other conveyance can be passed if the owner proves to the satisfaction of the competent authority that it was used in carrying the essential commodity without his knowledge or connivance.
>
> 10. In the result, the appeals are allowed and the impugned orders holding that measure of imposing fine in lieu of confiscation under the second proviso to Section 6-A of the Essential Commodities Act would be the market price of the essential commodity seized are set aside. However, considering the fact that since vehicles are already released, no further directions are required to be given with regard to the fine amount in lieu of confiscation."

17. On a careful analysis of the impugned proceedings, it is no doubt true that the show cause notice is not happily worded. However, certain submissions were made to the effect that the specified stage did not reach yet and in a way it is stated that the writ petition itself is premature.

18. In the light of the views expressed by the Apex Court in the decisions specified above and especially in the light of the observations made by the Full Bench of this Court in **Geetha General Merchants'** case (5 supra), though the show cause as such is not happily worded inasmuch as several factual controversies are involved, and also in view of the fact that the writ petitioner had already moved an application for release of the vehicle before the second respondent, let the second respondent dispose of the application filed by the writ petitioner for release of the vehicle in question within a period of two weeks from the date of receipt of this order especially in the light of the views expressed by the Apex Court and this Court in the decisions

specified above.

19. Accordingly, with the above direction, the writ petition is disposed of. No costs.

P.S.NARAYANA,J

Date:31-12-2007
KLP

---

[1] 1994(6) SCC 205
[2] 1996 (2) An.W.R. 441
[3] 1997 (1) ALT 171 (D.B)
[4] 1996(3) ALT 673 (D.B.)

[5] 2000(1)ALT239(F.B)
[6] (2000)3 Supreme Court Cases 306